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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/653,486
Filing Date: August 31, 2000
Appellant(s): CROW, JAMES J.

James J. Crow
For Appellant

**SUPPLEMENTAL
EXAMINER'S ANSWER**

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This is in response to the appeal brief filed December 1, 2006 appealing from the Office action mailed March 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Wang et al. US Patent No. 6,636,505

Bahlmann US Patent No. 6,684,242

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 7, 9, 9-13 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. US Patent No. 6,636,505. Wang teaches the invention substantially as claimed including a method for automatically provisioning a broadband communication service (see abstract).

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As per claims 1 and 11 Wang teaches the method, system and control software of converting a personal computer for

communicating information on a broadband communication network, said personal computer having a user and a physical location, comprising:

determining whether said physical location falls within a set of service boundaries for said broadband communication network (checking location of client and if service is available at that location; column 4, lines 53-60; column 5, lines 20-30; column 10, lines 63-67; column 11, lines 1-7);

if said physical location falls within said service boundaries, electronically offering said user access to said broadband communication network (sending client offer of broadband service; column 5, lines 20-30; column 11, lines 7-35);

receiving from said user an electronic order accepting said offer (user responds with an OK; column 5, lines 20-30; column 6, lines 25-32);

remotely qualifying said personal computer for said broadband communication network by determining whether said personal computer meets predetermined acceptance criteria for use of said broadband communication network (checking client system for compatibility with broadband network; column 6, lines 66-67; column 7, lines 1-15, lines 33-67; column 8, lines 1-41, lines 64-67; column 9, lines 1-11); and

fulfilling said order by initiating an automation agent on said personal computer to interact with a user and thereby configure said personal computer for access to said broadband communication network (configuring client to use the broadband network column 5, lines 20-67; column 6, lines 1-65); and

automatically configuring an asses of said broadband communication network to communicate with said personal computer (updating the Management Information Database of the ATM when a configuration is selected by the user; column 9, lines 23-32; column 10, lines 63-67 and column 11, lines 1-34), wherein

said automatically configuring said asset is performed by an automation server of said broadband communication network (column 6, lines 46-49).

As per claims 2 and 12 Wang teaches the conversion method, system and control software of claims 1 and 11 wherein said broadband communication network is a DSL network (column 6, lines 4-12).

As per claims 3 and 13 Wang teaches the conversion method, system and control software of claims 2 and 12 wherein said qualifying step further comprises using a narrowband modem to contact a DSL line qualification server to test a physical line outside of said broadband communication network (column 5, lines 49-65).

As per claims 7 and 17, Wang teaches the conversion method and system of claims 1 and 11 wherein said user is selected for said offer based on pre-established criteria (column 5, lines 54-65).

As per claim 8, Wang teaches the conversion method of claim 6, wherein at least some of said criteria are stored in a subscriber profile database (column 9, lines 36-55).

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As per claims 9 and 19 Wang teaches the conversion method, system and control software of claims 1 and 11 wherein said broadband communication network is an ISDN network (the network includes a fiber optic network; column 6, lines 4-12)

As per claims 10 and 20, Wang teaches conversion method, system and control software of claim 1, 11, and 22 wherein said broadband communication network is a wireless network (column 6, lines 4-12)

As per claim 18, Wang teaches conversion method of claim 17, wherein at least some of said criteria are stored in a subscriber profile database (column 9, lines 36-55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6, 8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. US Patent No. 6,636,505 in view of Bahlman US Patent No. 6,684,242. Bahlmann teaches the invention substantially as claimed including a method for preparing a computer for service activation with a network service provider (see abstract).

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As per claims 4 and 14 Wang teaches the conversion method, system and control software of claims 1 and 11. Wang does not explicitly disclose wherein said broadband communication network is a cable network. Bahlmann teaches a cable network. See column 3, lines 37-48. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the cable network of Bahlmann with the broadband network of Wang. A person of ordinary skill in the art would have been motivated to do this so that the network can be used with user premise equipment.

As per claims 5 and 15 Wang and Bahlmann teach the conversion method, system and control software of claims 4 and 14 wherein qualifying step further comprises detecting a carrier signal from said broadband communication network (Wang; column 6, lines 13-33).

As per claims 6 and 16, Wang and Bahlmann teach the conversion method, system and control software of claims 5 and 15 wherein said carrier signal has a signal strength and a set of error codes, and wherein said qualifying step is based at least part upon said signal strength and said error codes (Wang column 9, lines 1-11).

(10) Response to Argument

The examiner summarized the various points raised by the Appellant and addresses replies individually.

As per Appellant's arguments filed on 1 December 2006, the appellant argues that Wang does not teach:

The limitations of claim 1 reciting (1) initiating an automation agent on said personal computer to interact with the user and thereby configure a modem coupled to said personal computer for access to said broadband communication network and (2) automatically configuring an asset of said broadband communication network, wherein said automatically configuring said asset is performed by an automation server of said broadband communication network. Appellant argues that Wang does not teach initiating an agent on said personal computer (see Brief Page 5, lines 19-25, Argument A).

In response to Argument A, Appellant argues that Wang does not teach an initiating an automation agent on said personal computer. In the specification of the present invention, the automation agent is described on page 5, lines 20-25 and in Figures 1 and 2. The automation agent is described as a software module which can originate either within the subscriber computer or from an automation server on the network. The software is used to automate the requested broadband configuration and/or conversion process.

The reference Wang teaches that the subscriber modem are automatically provisioned as follows...a subscriber orders service from the network service provider by transmitting a request over the communication channel to from the CPE (customer premise equipment) to the server. The network service provider configures the network for service. Once the network is

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configured, the server automatically configures the modem in the CPE for the service over the communication channel (column 5, lines 37-45). In order to configure the modem on a broadband network, a service provisioning process must take place before data transmission begins (column 5, lines 51-53). Wang teaches an ILMI (Integrated Local Management Interfaces) based automated service provisioning method (column 6, lines 46-60). The ILMI provides the definition of the MIBs (Management Information Base) and procedures for the management of the network and client end of the user network interface. The adoption of ILMI may enable an automated and user friendly service that will provide the advantages of CPE hand free configuration ... (column 7, lines 7-10). The ILMI based service provisioning provides for the automatic provisioning of the user modem and a user interface (column 7, lines 17-56). It also provides applications on the CPE to access the configuration information needed and to automatically provision the modem and automatically provide a user friendly interface which allows a user to access the service to which they have subscribed (column 7, lines 47-53). These applications on the CPE are agents, or software modules, that are provided by the network service provider to automate service provisioning in response to a user request. The invention claims "initiating an automation agent on said personal computer." The reference Wang teaches this automation agent by the ILMI based applications on the CPE. Therefore, Wang teaches the limitation of Claim 1.

The Appellant argues that Wang does not teach automatically configuring an asset of said broadband communication network by an automation server (see Brief page 6, lines 8-10, Argument B).

In response to Argument B, an automation server is a module with extensions to control the automation agent software, as described on page 5, lines 26-27 in the specification. With regards to the “assets” of the claim, there is no clear explanation in the specification of what an asset is. The specification briefly mentions an “asset” 10, lines 1-3 where it says that the automation server begins a workflow process to complete the ordering process for all physical network assets as well as all account and billing database updates.

The ILMI based method of Wang, as described above, provides, from the network service provider, applications on the CPE to automatically provision a service request by a user (column 5, lines 38-44). The network service provider of Wang contains virtual circuits and DLS equipment 60 (column 6, lines 4-11). The network service provider also contains a server 130 which communicates all the necessary information between the CPE (column 9, lines 15-34). The automation server of the claimed invention is the server 130 of the network service provider in Wang and the assets of the claimed invention is the equipment 60 of the network service provider. Therefore, Wang teaches automatically configuring an asses of said broadband communication network to communicate with said personal computer, wherein said automatically configuring said asset is performed by an automation server of said broadband communication network.

The Appellant argues that Wang does not teach updating the MIB (management information base) of the ATM automatically (see Brief, Page 7, lines 5-8, Argument C)

In response to Argument C, Wang clearly teaches automatically updating the MIB of the ATM in column 8, lines 4-41 where the information between the MIB of the ATM and the CPE

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of the user are communicated automatically to limit the user's involvement in the service provisioning.

The Appellant argues that there is no motivation to combine the teaching of Bahlmann of the cable network with the broadband network of Wang (see Brief page 8, lines 18-22, Argument D).

In response to Argument D, it would be obvious to combine the teachings of the cable network of Bahlmann with the broadband network of Wang. Wang teaches a broadband network which supports applications that select from any service provider that the user is currently subscribed to (column 7, lines 24-27). It is well known in the art that a broadband network is one in which data is transferred at a rate of more than 56 kbps. Wang does specifically teach a cable network. Bahlmann teaches preparing a computer for service activation with a network service provider. The network service provider can be accessed by the user via a cable modem (see column 3, lines 41-45). It is well known in the art that a cable modem can transfer data at a rate of 500 kbps or higher. It would have been obvious to one of ordinary skill in the art to combine the cable modem of Bahlmann with the broadband network of Wang to provide the user with access to any network service provider that the user is subscribed to which communicates data at a speed greater than 56 kbps.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Uzma Alam

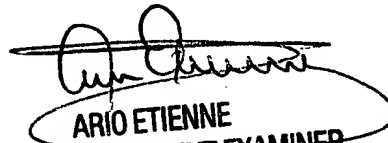


March 6, 2006

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